



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
APPELLATE SIDE

CRIMINAL APPEAL NO. 285 OF 1999

**From Original Conviction(s) and Sentence(s) in Criminal Case No. 2993 of
1996 of the Resident Magistrate's Court at Naivasha(I.W. Gitari)**

PATRICK MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO. 285 OF 1999

**From Original Conviction(s) and Sentence(s) in Criminal Case No. 2993 of
1996 of the Resident Magistrate's Court at Naivasha(I.W. Gitari)**

DANIEL G. WANDERI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO. 287 OF 1999

**From Original Conviction(s) and Sentence(s) in Criminal Case No. 2993 of
1996 of the Resident Magistrate's Court at Naivasha(I.W. Gitari)**

JAMES MWANGI KAMAU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO. 285 OF 1999

**From Original Conviction(s) and Sentence(s) in Criminal Case No. 2993 of
1996 of the Resident Magistrate's Court at Naivasha(I.W. Gitari)**

PETER MAINA NJENGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

These appeals were consolidated but all the other appellants have since died except the appellant in CRA No. 286 of 1999 Daniel G. Wanderi. The appellant was convicted of the offence of robbery with violence and sentenced to death. He appealed.

The complainant was robbed of personal Properties on 3rd September, 1996. Five days later, that is, on 8th September 1996 the appellant and others were found listening to a radio which was later identified by the complainant to be among the stolen properties. This was only five days after the robbery.

During the robbery the complainant did not identify the robbers. However, the recovery of the radio only five days from the date of the robbery was close enough to apply the doctrine of recent possession.

Actual violence was used on the complainant and the P3 form produced described the injury as “harm”. The complainant was attacked by many people and it may not be easy under such circumstances to identify the person who inflicted the injuries. We also note that the injuries were not of a disabling nature. We are inclined therefore to substitute the conviction under section 296(2) to that under section 296(1) of the Penal Code. Accordingly the conviction is now substituted.

The appellant has chosen a life in crime. This is the fifth appeal we are dealing with in respect of the same person. We believe a deterrent sentence is called for. The appellant shall serve 10(ten) years imprisonment together with (4) four strokes of the cane. He shall be subject to police supervision for five years after completion of the prison term. Orders accordingly.

Dated and delivered this 16th day of July, 2002.

MBOGHOLI MSAGHA

JUDGE

G. MBITO

JUDGE